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U.S. DISTRICT COURT
N.D. OF ALABAMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

**WILL HICKS,
Defendant**

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RULE 11(f) FACTUAL BASIS FOR GUILTY PLEA

COMES NOW the United States of America through its undersigned counsel, for the purpose of satisfying the requirements of Federal Rule of Criminal Procedure 11(f), submits the following Factual Basis in support of the guilty plea of **WILL HICKS**:

HealthSouth

1. HealthSouth Corporation ("HealthSouth") was formed in 1984. HealthSouth is the nation's largest provider of outpatient surgery, diagnostic imaging, and rehabilitative health care services with approximately 1800 locations in all 50 states and abroad. Since approximately 1988 until March **2003**, HealthSouth's common stock was listed on the New York Stock Exchange. **Many** of its executives, including its then Chief Executive Officer (the "CEO"), either owned shares in HealthSouth, or owned options to such shares. The CEO, and others, were also compensated in part by bonuses. The bonuses depended on how well HealthSouth performed financially.

2. HealthSouth, like other companies whose shares were publically traded, generated and publicized earnings expectations. Stock market analysts did the same. Whether a company met, exceeded, or failed to meet such expectations, was often a factor that influenced the price of its shares.

3. Since in or about 1986, when it made its Initial Public Offering (**IPO**), HealthSouth has been an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 required to file quarterly and annual statements (Forms 10-Q and Forms 10K) under said Act with the Securities Exchange Commission ("SEC"). These statements reported HealthSouth's earnings, as well as the value of its assets and liabilities. These reports were available to the public which used them to determine whether HealthSouth met the aforesaid expectations.

4. Under provisions of the federal securities laws and the regulations promulgated thereunder, HealthSouth was also required to make and keep books, records and accounts that accurately and fairly reflected the transactions and dispositions of the company's assets and to devise and maintain a system of internal accounting controls sufficient to provide – (i) reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") and other criteria applicable to such statements and to maintain the accountability of assets; and (ii) reasonable assurances that the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

The Conspiracy.

5. Beginning at least in 1996, the CEO, other Senior Officers and members of HealthSouth's accounting staff including, from time to time, Michael Martin, William Owens, Aaron Beam, Malcolm McVay, Weston Smith, Emery Harris, Ken Livesay, Cathy Edwards, Virginia Valentine, Kay Morgan, Angela Ayres, Jason Brown and others, engaged in a conspiracy and scheme and artifice to, among other objectives, defraud investors by artificially inflating HealthSouth's earnings and earnings per share, make false entries in HealthSouth's books and records, file false statements with the SEC and commit mail and wire fraud.

6. The CEO and other Senior Officers reviewed monthly and quarterly preliminary reports showing HealthSouth's true and actual financial results, which usually showed that HealthSouth had not met earnings per share expectations. At the direction of the CEO, these Senior Officers would then direct HealthSouth's accounting staff to manipulate HealthSouth's books, accounts and records to ensure that HealthSouth's earnings per share number met or exceeded those expectations.

7. Methods to increase earnings included making entries to reduce offsets against revenues or to reduce expenses. Corresponding fraudulent entries were made to increase assets and decrease liabilities on HealthSouth's Balance Sheet. Such entries were made in, among other accounts, HealthSouth's (1) Property, Plant and Equipment ("PP&E") accounts; (2) cash accounts; (3) inventory accounts; (4) intangible asset (goodwill) accounts; and (5) investment portfolio.

8. These entries caused the quarterly and annual financial statements filed with the SEC for the years from before 1996 through 2002, that is, Forms 10-Q and Forms 10-K, to be materially false. The cumulative overstatement of assets summed more than a billion dollars. Some of these financial statements were transmitted electronically from Birmingham, Alabama to Washington, D.C., to be filed with the **SEC**.

9. The CEO and other conspirators benefitted from the conspiracy by receiving salaries, bonuses, and **an** increased value in their stock and stock options. The investing public suffered to the extent they paid for shares whose value was inflated by the aforesaid conspiracy.

The Defendant

10. From 1991 until 1996, defendant **WILL HICKS** was a securities analyst at Cowen and Company in Boston, Massachusetts, where he specialized in coverage of the health care industry. During this period he issued reports on healthcare companies including HealthSouth. From 1996 until March 1999, defendant **HICKS** was a principal in 21st Century Health Ventures, a company he owned with the CEO and Michael Martin, the then Chief Financial Officer of HealthSouth. In March 1999, defendant **HICKS** was hired by the CEO for the position of Vice President of Investments at HealthSouth. Defendant **HICKS'** responsibilities included managing HealthSouth's investment portfolio and advising HealthSouth on the viability of current and potential investments. Defendant **HICKS** also caused the preparation of summaries of HealthSouth's investment portfolio and met with HealthSouth's auditors to review and discuss the value of the investment portfolio.

Inflated Valuation of HealthSouth's Investment Portfolio

11. In or about the late fall or early winter of 2000, defendant **HICKS** learned that the value of HealthSouth's investment in a privately held company ("the privately held company") which operated senior residential assisted living facilities ("the assisted living facility investment") would be substantially impaired unless HealthSouth participated in an additional round of financing being offered by the privately held company.

12. In or about the end of 2000, defendant **HICKS** informed the **CEO** and one of the other Senior Officers that the value of HealthSouth's assisted living facility investment, which HealthSouth carried on its balance sheet at \$13 million, should be written off or its value would be substantially impaired unless HealthSouth participated in an additional round of financing being offered by the privately held company.

13. In or about the winter of 2000 or spring of 2001, one of the Senior Officers instructed defendant **HICKS** not to inform HealthSouth's auditors orally or in writing that the value of the assisted living facility investment would be substantially impaired unless HealthSouth purchased additional shares of the privately held company.

14. In or about the winter of 2000 or spring 2001, defendant **HICKS** knowingly and intentionally joined in the above described conspiracy.

15. In or about the spring of 2001, defendant **HICKS** caused the preparation of a **summary** of the assets in HealthSouth's investment portfolio to be provided to HealthSouth's accountants in connection with their audit of HealthSouth's financial statements for the year ended December 31, 2000, which contained false information and omitted material facts concerning HealthSouth's assisted living facility investment.

16. In or about the spring of 2001, during the audit of HealthSouth's financial statements for the year ended December 31, 2000, defendant HICKS provided HealthSouth's accountants with the investment portfolio summary described above which contained false information and omitted material facts about the value of the assisted living facility investment.

17. In or about the spring of 2001, defendant HICKS met with HealthSouth's accountants during their audit of HealthSouth's financial statements for the year ended December 31, 2000, discussed HealthSouth's investment portfolio and omitted material facts concerning the value of the assisted living facility investment.

18. In or about 2001, defendant HICKS learned that HealthSouth would not participate in the additional round of financing offered by the privately held company and that as a result HealthSouth's assisted living facility investment was substantially worthless. Defendant HICKS advised one of the Senior Officers that HealthSouth was required to write down the value of the assisted living facility investment.

19. In or about 2001, one of the Senior Officers told defendant HICKS that HealthSouth would not write down the value of its assisted living facility investment and that HealthSouth would continue to represent on its books and to its auditors that the investment was valued at \$13 million.

20. In or about the spring of 2002, one of the Senior Officers instructed defendant HICKS not to inform HealthSouth's accountants of material facts which would adversely affect the \$13 million valuation which HealthSouth placed on its assisted living facility investment.

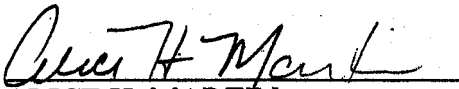
21. In or about the spring of 2002, defendant HICKS caused the preparation of a summary of the assets in HealthSouth's investment portfolio to be provided to HealthSouth's

accountants in connection with their audit of HealthSouth's financial statements for the year ended December 31, 2001 which contained false information and omitted material facts concerning the value of the assisted living facility investment.

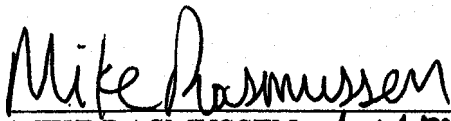
22. In or about the spring of 2002, during the audit of HealthSouth's financial statements for the year ended December 31, 2001, defendant **HICKS** provided HealthSouth's accountants with **an** investment portfolio summary which contained false information and omitted material facts about the value of the assisted living facility investment.

23. In or about the spring of 2002, defendant **HICKS** met with HealthSouth's accountants during their audit of HealthSouth's financial statements for the year ended December 31, 2001, discussed HealthSouth's investment portfolio and omitted material facts concerning the value of the assisted living facility investment.

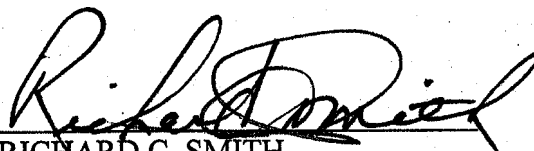
24. Defendant **HICKS** and others also maintained in the files, books and records of HealthSouth the above-described documents and records which they knew to contain false information.



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